Supreme Court, U. S.
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IN THE

Supreme Court of the United States

NO. 76-1662

THE UNITED STATES OF AMERICA

v.

BOARD OF COMMISSIONERS OF
SHEFFIELD, ALABAMA

BRIEF FOR WESTHEIMER INDEPENDENT SCHOOL DISTRICT AMICUS CURIAE

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argument within a few days. The following brief is the consolidated brief which has been filed on behalf of the six (6) school districts and the City of Beeville, Texas, in the consolidated cases to be heard in Dallas, Texas, in July, 1977.

STATEMENT OF THE CASE

This memorandum deals with the question of whether the preclearance requirements of Section 5 of the Voting Rights Act of 1965 (42 U.S.C. §1973c) apply to cities and school districts. It also deals with the issue of whether, in view of the 1976 amendments to 28 U.S.C. §2284, the convention of a three-judge court is called for in cases where Plaintiffs allege cities and school districts have failed to comply.

SUMMARY OF ARGUMENT

The fact that the Voting Rights Act of 1965 as amended is so plain and unambiguous in its provisions makes the issue of coverage of cities and school districts a "false" issue. There simply is no issue, and no genuine substantial argument can be made that the preclearance requirements of Section 5 apply to cities and school districts. While it is true that issues raised under the Voting Rights Act must be decided by a three-judge court, there is no room for a holding that a three-judge court is required simply because the plaintiff *alleges* there is an issue under that act. A three-judge court is not required to rule on this issue, because the alleged "issue" lacks substance. The August 12, 1976, amendment to 28 U.S.C. §2284 makes this a matter to be ruled upon by a single district judge.

QUESTION PRESENTED

Whether a three-judge court is required to decide that a three-judge court is not required?

No question is presented concerning the coverage of the Voting Rights Act. That Act is plain and unambiguous and requires only that it be read—not that anything be decided.

ARGUMENT

POINT I: THE AMENDMENTS TO 28 U.S.C. §2284 WHICH BECAME EFFECTIVE ON AUGUST 9, 1976, SPECIFICALLY MADE THE QUESTION OF WHETHER A THREE-JUDGE COURT SHOULD BE APPOINTED A MATTER TO BE DECIDED BY A SINGLE DISTRICT JUDGE.

The principal case on the coverage of cities and school districts with respect to preclearance requirements of the Voting Rights Act of 1965 is *United States v. Board of Commissioners of Sheffield, Alabama,* No. 76-M-1086, N.D. Ala., Northwestern Division. That suit was filed on August 9, 1976, three days before the effective date of the 1976 amendments to 28 U.S.C. §2284. The issue here briefed was not presented. In *United States v. Texas,* 422 F. Supp. 917 (S.D. Tex., 1976), it was not raised.[1]

Under the ruling in *Allen v. Board of Elections,* 393 U.S. 544, (1969) it was the duty of a district judge to call for the convention of a court of three judges in most cases. Indeed Chief Judge Brown made it plain

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1. The issue was argued orally to the same Judge in another case on January 28, 1977, at which time the Court observed from the bench that this was a new issue to that Court.

in his appendix to *Jackson v. Choate,* 404 F.2d 910 (5th Cir., 1968) that his personal opinion was that a Court of three judges should be convened in virtually every case so that the three-judge panel could decide the question of whether a three or one judge court was required.

In 1976, however, the law was changed based on the recommendation of the Judicial Conference of the same year. The statute used to state as follows:

> "(5) ANY ONE OF THE THREE JUDGES OF THE COURT MAY PERFORM ALL FUNCTIONS, conduct all proceedings except the trial, and enter all orders required OR PERMITTED by the rules of civil procedure. . . ."

The capitalized words were deleted in the 1976 amendment. The pertinent part of 28 U.S.C. §2284 now provides as follows:

> "(1) Upon the filing of a request for three judges, the judges to whom the request is presented shall, *unless he determines that three judges are not required,* immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. . .
>
> "(2) . . .
>
> "(3) *A single judge* may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure. . ."
>
> (The iltalicized words were added by the amendment).

It was once written facetiously in a dissenting opinion in the Supreme Court of the United States that the Court

had adopted the practice of looking at the plain language of a statute only if the legislative history were ambiguous. The language of this amendment certainly is clear and plain enough that it should be unnecessary to look at legislative history to determine what it means.

A look at the legislative history, however, shows that the elimination of the Civil Rights Division's position is the very purpose of the amendment. The Congressional Record for August 2, 1976, at pages H8143-H8145 shows plainly that it was the intent and purpose of Congress to eliminate the necessity of a three-judge court in most cases. The House Committee Chairman, after pointing out that the amendment "in no way affects the right to a three-judge court *where otherwise mandated* by statute such as . . . the Voting Rights Act of 1975. . . ," stated as follows:

> "The present three-judge court statute dates from 1910. The purpose of Congress in enacting it was to limit the effect of the landmark decision of the Supreme Court in *Ex Parte Young*, 209 U.S. 123 (1908), which held that State officials could be enjoined by Federal Courts from enforcing unconstitutional statutes.
>
> "The Young decision came at the turn of the century, at a time of vigorous expansion of big business and the railroads.
>
> "In response to this expansion the States enacted regulatory statutes. However, following the Young case, these statutes were repeatedly enjoined by single Federal judges. . . . Today, however, the circumstances giving rise to the three-judge court statute have disappeared, and States no longer require this kind of protection from the arbitrary actions of a single judge.

> "Increasingly, however, the requirement of a three-judge court places an adminstrative burden on our Federal court system. The scarce judicial manpower of the Nation is inefficiently used by requiring three judges to convene for work that could be performed by one: . . . In response, the Judicial Conference requested this legislation to ease the administrative burden on our courts."

Additionally, please see 1976 U. S. Code Cong. and Adm. News, p. 3172 where, at the bottom of the page and extending to the top of the next page it is specifically noted that the decision of whether a three-judge court should be appointed is now a function of the district judge, and not the three-judge court itself.

We need look no further than the precedents of this Court for confirmation of this position. In *Webber v. White*, 422 F. Supp. 416 (N.D. Tex., 1976), this Court examined the plain language of both 42 U.S.C. §1973(c) and the 1976 amendments to 28 U.S.C. §2284 and ruled, unequivocally, that a single judge now has the clear authority to dismiss a cause of action under 1973(c) for failure to state a claim upon which relief can be granted. Please see, *generally*, 422 F. Supp. 416, 423-425.

Thus, as this Court ruled in *Webber, supra*, 28 U.S.C. §2284 as amended in 1976 does not *require* the appointment of a three-judge court. We respectfully urge that it does not even *allow* the appointment of a three-judge court because there must be some basis other than 28 U.S.C. §2284 upon which to justify the convention of such a court.

Accordingly, if Section Five of the Voting Rights Act does not apply to these defendants, there is no basis for

convening such a court. As we will demonstrate in Point II, *infra*, the argument that coverage is present is absolutely without merit and cannot afford the basis for the appointment of a court of three judges. Any court of three judges which has been convened subsequently to August 9, 1976, for the purpose of hearing argument that the Voting Rights Act of 1965 applies to a city or a school district should decide one issue, and one issue only. The only decision that court should make is that the convention of a court of three judges has been improperly called for and that such Court has been convened improperly. Since the Voting Rights Act of 1965 clearly does not apply to cities and school districts insofar as the preclearance requirements of 42 U.S.C. § 1973c are concerned, the three-judge court should disband itself and the single judge originally having responsibility for the case then should enter an order dismissing the case. *Webber v. White, supra,* at 430.

POINT II: THE PRECLEARANCE REQUIREMENTS OF THE VOTING RIGHTS ACT DO NOT APPLY TO CITIES AND SCHOOL DISTRICTS BECAUSE:

A. The Statutory Language Is Plain And Unambiguous In Its Designation Of The Applicability Of The Preclearance Requirements.

It is a cardinal principle of law that when the evidence of a certain fact is such that reasonable minds could not differ, that fact is said to be established as a matter of law. We believe the converse of this also is true. When statutory provisions and wording are such that reasonable minds could not differ, those provisions are law as a matter of fact.

Cities and school districts in Texas do not register voters. This is done only by counties. Tex. Elect. Code §5.092. In spite of the fact that a voting precinct or entity which does not register voters is specifically excluded from the definition of "political subdivision" in the 1965 amendments to the Voting Rights Act, it is still argued by the Civil Rights Division and others that they should be considered "political subdivisions" anyway for preclearance purposes.

The preclearance requirements are set forth in Section 5 (42 U.S.C. §1973c) and apply to those entities which Section 4, (42 U.S.C. § 1973b) *says they apply to*. We give every presumption in favor of the result sought by the proponents. Still, how are we to reach the conclusion the act does something which it plainly and specifically does not do? If the Attorney General *and* the Director of the Census determine certain facts about a State, the Voting Rights Act of 1965 as amended applies to that State. 42 U.S.C. §1973b(b). So, for these purposes, we accept that the Act applies to the State of Texas.[2] Let us look at what that means. The Act *says* in Section 5, 42 U.S.C. §1973c, that:

> "Whenever a *state* or *political subdivision*. . . shall enact or seek to administer (certain changes) with respect to voting different from that (previously in effect) . . ." it shall follow one of two prescribed procedures for pre-clearance. (emphasis supplied)

Since the Act in plain and simple language *says* it applies to states and political subdivisions, and specifically defines political subdivisions, how can it be argued in good faith that it applies to something other than a state or "political subdivision" as defined?

2. This issue is before the Supreme Court in *Briscoe v. Levy*, Docket No. 76-60, and at present is awaiting decision.

We respectfully submit and urge that it can not be done.

B. No Reasonable Argument To The Contrary Can Be Made.

This subpoint of this brief is extremely broad. It is based upon the premise, however, that if a reasonable argument could be made, it would have been made by now in at least one of the many pending cases. We have examined all of briefs available to us which were filed in several of the cases (pending before this Court).

In the *Trinity Independent School District* case, the Civil Rights Division has argued legislative intent and legislative history in various forms. There is no reference anywhere in that entire 44 page writing to the specific language of the Act which they claim makes cities and school districts subject to the preclearance requirements. The closest that brief comes to making reference to the specific wording of the Act is at page 8 where it is said:

> "The language used by Congress in Sections 4 and 5 of the Act is clear and *demonstrates no intention to exempt* . . . changes . . . made in school districts. . ." (emphasis supplied)

This demonstrates they have missed the entire point of the controversy. No one has ever claimed cities and school districts are *exempted* from the preclearance requirements. They simply are not *included* in the first place.

The principal point the Civil Rights Division tries to "smoke screen" around is that where a statute is plain and unambiguous, it is the duty of the courts to enforce the Act as written, and the questions of legislative history and intent are out of place in any argument about what the Act does. *Caminetti v. United States*, 242 U.S. 470, 37 S. Ct. 192, 61 L.Ed. 442 (1917), 485 (1917); *Application of Martin*, 195 F.2d 303, 305 (C.C.P.A. 1952), *certiorari denied* 344 U.S. 824; *U.S. v. Kurzenkanbe*, 136 F. Supp. 17, 19 (D.C.N.J. 1955). In *United States v. Public Utilities Commission of California*, 345 U.S. 295, 319 (1953), Mr. Justice Jackson in a concurring opinion wrote:

> ". . . by analysis of the statute instead of by psychoanalysis of Congress. When we decide from legislative history, including statements of witnesses at hearings, what Congress probably had in mind, we must put ourselves in the place of a majority of the Congressmen and act according to the impression we think this history should have made on them. Never having been a Congressman, I am handicapped in that weird endeavor. That process seems to me not interpretation of a statute but creation of a statute."

Moreover, the Supreme Court in *Chandler v. Roudebush*, 48 L.Ed.2d 416 (1976), wrote:

> "The plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover."

In the Trinity brief, they have attempted to use this doctrine to support the argument that the language of the

Act shows no intention to *exempt* cities and school districts. The point they do not touch on, and indeed can not attempt to answer, is that the preclearance requirements of Section 5 plainly apply to "a state or political subdivision" *only*. The definition of "state" is not included within the Act. We must assume it has its usual and ordinary meaning. *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490, 506 (1944); *Deputy v. DuPont*, 308 U.S. 488, 498 (1939); *Reliable Volkswagon v. World-Wide Automobile Corp.*, 216 F. Supp. 141, 143 (D.C.N.J. 1963). In a school district case in which the meaning of the term "state" was considered, it was held that a school district could not claim the immunity given to the states by the Eleventh Amendment. *Fabrizio & Martin, Inc. v. Board of Education Central School District No. 2*, 290 F. Supp. 945 (S.D. N.Y., 1968); *rev'd* on other grounds, 523 F.2d 378 (2d Cir. 1975). In that case at page 948 the Court wrote:

> "It appears conclusively that, although a Central School District engages in the carrying out of a particularly important governmental function which traditionally is the responsibility of the state, it does so as an autonomous agency, at least with respect to the establishment, support, fiscal and business management and control of its schools."

The term "political subdivision" is defined, however, and the definition given in the Act is the definition which must be used regardless of what its usual and ordinary meaning may be. *Western Union Telegraph Co. v. Lenroot, supra* at 502; *Fox v. Standard Oil Co.*, 294 U.S. 87, 96 (1934); *U.S. v. Clark*, 412 F.2d 885, 890 (5th Cir. 1969). That definition, found at §1973 1(c)(2), states in its entirety that:

> "The term 'political subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a state which conducts registration for voting."

The Civil Rights Division's brief completely ignores the fact that it tries to make cities and school districts subject to the Act *contrary* to the expressed wording of the Act. It takes something more than imagination to do that; it takes distortion. We agree with the statement made at page 5 of the Reply Brief filed by the City of Sheffield, Alabama:

> "In its brief we believe that the Department of Justice has attempted to mislead the Court with selected quoted and copied portions of testimony offered at the hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 6400, 89th Congress, First Session."

The Civil Rights Division cites testimony before the House Committee extensively. Let us concede that some witnesses thought or wished the result the Civil Rights Division now urges. The plain language of the statute precludes it, however. In *Lohf v. Casey*, 330 F. Supp. 356 (Colo., 1971), a similar argument was answered as follows:

> "In the first place, the Congress made no attempt in the statute to distinguish between member and non-member firms, and we 'cannot impose upon the plain language [our] own idea of what Congress must have meant.' H. A. Brody Corp. v. United States, 197 F. Supp. 918, 922 (S.D. Iowa, 1961). Burge v. Commissioner of Internal Revenue, 253 F.2d 765,

> 769 (4th Cir. 1958); MacKenzie v. Hare, 239 U.S. 299, 308, 36 S.Ct. 106, 60 L.3d. 297 (1915)."

The Civil Rights Division's brief, in its effort to have this Court "impose" preclearance on cities and school districts, cites continuously from the testimony of various witnesses at both the House and Senate Hearings. But nowhere do they cite any testimony, nor any committee report, nor any sponsor, nor any other *authoritative* source for the proposition that this Act was intended to mean anything different from what it says. The entire argument is that "the Congress must have meant this because these witnesses said this at the hearings." The Supreme Court said in *MacKenzie v. Hare*, 239 U.S. 305, 308, (1915), that:

> "Whatever was said in the debates on the bill or in the report concerning it, preceding its enactment or during its enactment, must give way to its language; or, rather, all the reasons that induced its enactment and all of its purposes must be supposed to be satisfied and expressed by its words, and it makes no difference that in discussions some may have been given more prominence, seemed more urgent and insistent than others, presented the mischief intended to be remedied more conspicuously than others."

As far as the long list of city and school district submissions is concerned, it shows only that submissions have been made. Many of the defendants in this case made submissions. If the Civil Rights Division had approved, we would be educating children now instead of spending needless energy answering the frivolous arguments the Civil Rights Division has dreamed up in its desperation. As to the numerous cases cited in which the preclearance requirements have been held to apply to jurisdictions other

than "political subdivisions," we point out only that this issue was not raised in any of them. The precise issue has been answered only in *United States v. Sheffield*. After arguing that *Sheffield* is not binding authority, in the Trinity brief, the Civil Rights Division further states that it does not understand the opinion in *Sheffield*, and further confesses that it does not understand the fact that its arguments are "untenable" as they were described by that Court.

C. When The Voting Rights Act Means "Cities And School Districts" It Says "Cities And School Districts".

Section 1971(a)(1) of the Voting Rights Act provides that:

> "All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any *State, Territory, District, County, City, Parish, Township, School District, municipality, or other territorial subdivision*, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; . . ." (emphasis supplied)

Section 1973c of the same Act provides that:

> "Whenever a *State or political subdivision* . . . shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure . . ." (emphasis supplied)

Section 1973 1(c)(2) defines political subdivision as only those subdivisions which register voters. (Please see POINT IIB, *supra*, for complete definition.)

The specific inclusion of cities and school districts in Section 1971(a)(1) and the subsequent omission of those terms in Section 1973c is of great significance in determining whether cities and school districts are subject to the provisions of Section 1973c. The well established rule of statutory construction, *Inclusio Unius Est Exclusio Alterius* (the inclusion of one is the exclusion of another), operates in this case to preclude the Civil Rights Division's contention that once a state is covered, all subdivisions within that state are covered as well. *Federal Trade Commission v. Simplicity Pattern Company*, 360 U.S. 55, 67 (1959);[3] *United States v. Atchison, T. & S. F. R. Co.*, 220 U.S. 37, 44 (1911);[4] *Corn Products Refining Co. v. Benson*, 232 F.2d 554, 562 (2d Cir. 1956);[5] *Hamilton v. National Labor Relations Board*, 160 F.2d 465, 470 (6th Cir. 1947) *certiorari denied* 332 U.S. 762.[6] The rule was recently reaffirmed by the Fifth Circuit in a *per curiam* opinion in *United States v. Wong Kim Bo.*, 472 F.2d 720, 722 (5th Cir. 1972). In that case the Court wrote:

> "Moreover, where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally pre-

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3. The Supreme Court wrote: "We cannot supply what Congress has studiously omitted."

4. Mr. Justice Holmes wrote: "The presence of such a provision in the one part and its absence in the other is an argument against reading it as implied."

5. The Court wrote: "Where such a provision has been carefully included in one place and excluded in another place in a definitional statutory provision, it should not be implied in the place omitted."

6. The Court wrote: "Such an intentional omission is significant and important."

sumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."

In *Federal Trade Com. v. Sun Oil Co.*, 371 U.S. 505, 515 (1963), the Supreme Court decided a case similar to ours in that the statute under discussion involved in the first instance a broad interpretation followed by language necessitating a narrower interpretation. The Court wrote:

> "There is no reason appearing on the face of the statute to assume that Congress intended to invoke by omission in Section 2(b) the same broad meaning of competition or competitor which it explicitly provided by inclusion in Section 2(a); the reasonable inference is quite the contrary."

It is apparent that Congress intended that Section 1971(a)(1) apply to cities and school districts. It is equally apparent that Congress intended that Section 1973c not apply to cities and school districts. Indeed, had Congress intended to subject cities and school districts to the preclearance requirements of Section 1973c, it could easily have done so by simply using the same language used in Section 1971, where cities and school districts were specifically included, and it should not be presumed lightly that the Congress is unaware of these cardinal principals of statutory construction.

D. The Civil Rights Division's Contention That If A State Is Covered All Subdivisions Within That State Are Covered Is Contrary To The Wording Of The Statute.

The Voting Rights Act of 1965 was specifically designed by Congress to eliminate some illegal registration

practices found to be occurring in a few states. *South Carolina v. Katzenbach*, 383 U.S. 301, 328-29 (1966). Of these states, only Louisiana has parishes. Indeed, of all the fifty states, only Louisiana is subdivided by the parish. If it were meant by the statute that all subdivisions in a covered state were covered, it would not have been necessary to define "political subdivision" as including a "parish" because every parish in the United States would have been covered already when Louisiana was brought under the Act initially in 1965. The strained construction put on the Act by the Civil Rights Division would render the word "parish" in §1973 1(c)(2) meaningless. Statutes should be construed so that some of their words are meaningless. *Wilderness Society v. Morton*, 479 F.2d 842, (D.C. Cir. 1973) *certiorari denied* 411 U.S. 917; *U.S. v. Wong Kim Bo*, 472 F.2d 720 (5th Cir. 1972); *U.S. v. Johnson*, 462 F.2d 423, (3rd Cir. 1972) *certiorari denied* 410 U.S. 937. In *Wilderness Society*, (supra), the Court wrote:

> "It is a well known maxim of statutory construction that all words and provisions of statutes are intended to have meaning and are to be given effect, and words of a statute are not to be construed as surplusage. See McDonald v. Thompson, 305 U.S. 263, 266, 59 S.Ct. 1976, 83 L.Ed. 164 (1938); D. Ginsberg and Sons, Inc. v. Popkin, 285 U.S. 204, 208, 52 S.Ct. 322, 76 L.Ed. 704 (1932); Klein v. Republic Steel Corp., 3 Cir., 435 F.2d 762, 765-766 (1970); Consolidated Flower Shipments, Inc. - Bay Area v. C. A. B., 9 Cir., 205 F.2d 449, 450 (1953). *We should be particularly mindful of this maxim in cases such as these where there is specific evidence that Congress placed significance on the statutory language in dispute.*" (emphasis supplied)

Indeed, if a reasonable interpretation can be given to the statute including the word then an interpretation which renders that word superfluous cannot be adopted. *Ex Parte Public National Bank*, 278 U.S. 101, 104 (1928); *Consolidated Flower Shipments, Inc.*, (supra); *England v. Moore Equipment Company*, 94 F. Supp. 532 (N.D. Cal. 1950), *affirmed* 185 F.2d 1019. This is especially true when dealing with §5 because Congress intended it to apply to a few readily identifiable states. It said to whom within the various states, covered or otherwise, that section could apply by using a specific definition of the term "political subdivision". In view of the great amount of consideration given the Act in general and the definition of political subdivision in particular, no part of that Act should now be rendered meaningless by adopting the strained construction advanced by the Civil Rights Division.

E. Congress Has Given The Term "Political Subdivision" A Unique Definition Which Is Not To Be Ignored.

A significant question which the Civil Rights Division has not attempted to answer in its briefs to date is the implication of the unique definition of political subdivision offered in the Act. We say *unique* because it is wholly unprecedented and completely deviates from the meaning Congress and the Attorney General's office have given it in the past.

"Political subdivision" has been defined in the Social Security Act as ". . . an instrumentality of (A) a state, (B) one or more political subdivisions of a State, or (C)

a State and one or more of its political subdivisions." 42 U.S.C. §418(b)(2). The term is used in the Internal Revenue Code [26 U.S.C. §103(a)(1)] and the Labor Management Relations Act [29 U.S.C. §152(2)], but is not defined in either of these statutes. In these circumstances the term has been construed broadly in the context of the issues presented. *See, generally, N.L.R.B. v. Natural Gas Utility District*, 402 U.S. 600, 29 L.Ed.2d 206, 91 S. Ct. 1746 (1971).

Past attorneys general have defined the term to include ". . . any division of the state made by the proper authorities thereof . . . for the purpose of carrying out a portion of those functions of the State which by long usage and the inherent necessities of government have always been regarded as public" 30 Op. Atty. Gen. (1914) p. 252, and "any subdivision of the state created for a public purpose. . ." 38 Op. Atty. Gen. (1937) p. 563. This definition or an indistinguishable form of it has been used so routinely by Congress that it can almost be said to represent the standard federal definition of that phrase. See, *e.g., N.L.R.B. v. Natural Gas Utility District, supra,* 402 U.S. 600, 608-609.

It thus can be presumed that Congress was aware of this standard definition when it was considering Section 5 of the Voting Rights Act. And yet, the following colloquoy occurred:

> Mr. Tenzer: ". . . Since you agree to define in the law the term 'election', would you also agree to define the term 'political subdivision', *so there would be no question about that as one that regularly maintains a system for registering voters?*

> Mr. Katzenbach: "I think it might be a good idea to define political subdivision. I think the committee ought to consider giving it consideration." (emphasis supplied)
>
> Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 6400, 89th Cong., 1st Session p. 467.

The resulting language of the definition itself demonstrates clearly that "political subdivision" as used in this Act is to mean something different from its normal definition. The sharp deviation from the historically settled federal definition of "political subdivision" makes this intention undeniably clear. When Congress used it in the past, it included *inter alia* transportation authorities, [*C.I.R. v. Shamberg's Estate*, 144 F.2d 998 (2nd Cir. 1944)], utility districts [*N.L.R.B. v. National Gas Utility District, supra*] and cities [*Supreme Forest Woodmen's Circle v. Belton*, 100 F.2d 655 (5th Cir. 1938)]. And yet in spite of a complete departure from the standard all-inclusive Federal definition, in language painstakingly crafted to encompass governmental entities which legislate or conduct voter registration, the Civil Rights Division argues that this unique definition is to be *ignored*. (See p. 31 of the Civil Rights Division's brief filed in *United States v. Trinity Independent School District*.)

To ignore this definition, and its relationship to the term "state" (which is assumed to bear its standard meaning, Part II(B), *supra*) is to overlook the Congressional scheme which is the *very core of the preclearance concept*. In order to effect prompt and meaningful protection for voting rights, blacks had to be admitted into the electoral process. In other words they had to be *registered*. The

blocks to registration came in two forms — discriminatory legislation (at the state level) and discriminatory enforcement of that legislation (at the County or parish level). It was simply not enough to strike down newly passed legislation. Congress had to devise a means to achieve equal protection in the registration process itself to preclude *ad hoc* selective changes at *that* level of government. Its solution was the unique definition of "political subdivision", aimed at attacking vices in the registration process itself.[7] This created a perfectly ordered scheme of a guaranteed admission to the electoral process.

And now the Civil Rights Division urges a construction of this section which calls for the Court to ignore a legislative definition in order to distort this Congressional purpose. In the interest of preserving this Congressional scheme we urge that statutory language is not to be ignored, at the urging of the Civil Rights Division or anyone else.

CONCLUSION

Section 1973(c) applied to states and political subdivisions, which is defined in the Act as only those entities which register voters. Further, when the Act means "cities and school districts" it says "cities and school districts". Nowhere in §1973 of the Act is "city" or "school district" mentioned while §1971 of the same Act is expressly made to apply to both.

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7. We would call the Court's attention to the structure of the first sentence of the section, which repeats three times the dichotomy "State or political subdivision . . . enact or seek to administer." "State" is clearly intended to be coupled with "enact", so that statewide legislation will be covered. "Political subdivision" thus is linked to "seek to administer" so that local enforcement of registration laws will be covered.

Congressional language should not be ignored, neither should it be rendered meaningless. Both of these results obtain, however, if the Civil Rights Division's interpretation is adopted. Had a reasonable argument been available in support of the Civil Rights Division's position it certainly would have been made by now. As long as the language of Section 1973(c) remains in its present form, there will be no argument forthcoming which will not require that the Court wholly ignore crucial parts of the statute. Ignoring the language, however, will not make it go away. Section 1973(c) simply does not grant the Civil Rights Division the power it seeks in these proceedings, and we pray for a declaration to that effect.

Respectfully submitted,

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CERTIFICATE OF PERMISSION TO FILE

I hereby certify that permission to file this amicus curiae brief was granted orally by Mr. Vincent McAlister, counsel for Appellee, and by Mr. Howard E. Shapiro of the Office of the Solicitor General this 21st day of June, 1977. The reason this permission was not obtained in writing is that counsel did not know of the current status of this matter until news media called it to his attention on June 20, 1977, and on this date we learned from the Clerk of this Court that the matter is scheduled to be considered on its merits by the Court on June 23, 1977. Accordingly, we have endeavored to expedite this filing.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Amicus Curiae Brief in Support of Appellee's Motion to Affirm has been served upon Mr. Vincent McAlister, Almon, McAlister & Ashe, P. O. Drawer N, Sheffield. Alabama, 35660; and Mr. Howard E. Shapiro, Solicitor General's Office, United States Department of Justice, Washington, D. C., 20530, by mailing a copy of same in a properly addressed and stamped envelope this 21st day of June, 1977.

ORIGINAL SIGNED
JAMES E. ROSS

JAMES E. ROSS

Printed copies furnished as above this 8th day of July, 1977.

ORIGINAL SIGNED
JAMES E. ROSS

JAMES E. ROSS